

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

VAIL SUMMIT RESORTS, INC.

Employer,

and

CASE 27-UC-191

KEYSTONE PROFESSIONAL SKI PATROL ASSOCIATION,

Petitioner.

DECISION AND CLARIFICATION OF BARGAINING UNIT

AND

DECISION AND ORDER

Upon a unit clarification petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, (herein, the Act), a hearing was held in this matter.¹ Pursuant to the provisions of Section 3 (b) of the Act, the National Labor Relations Board (herein, the Board), has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and they are hereby affirmed.
2. The Employer is a Colorado corporation with various offices and facilities located throughout the State of Colorado, including the mountain resort at issue herein, where the Employer does business as Keystone Resorts. During

the last twelve month period, the Employer has had gross revenue in excess of \$500,000 and has purchased and received at its Keystone Resort facility goods valued in excess of \$50,000 directly from points and places located outside the State of Colorado. I find that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Keystone Professional Ski Patrol Association is a labor organization within the meaning of the Act.

4. The Employer operates a ski resort and related facilities at Keystone, Colorado. The ski area consists of approximately 1861 acres of skiable terrain over three separate peaks: Keystone Mountain, North Peak and The Outback. The largest classification of employees is that of ski instructor, which number between 400 and 600. In the Employer's mountain operations division, the division at issue herein, approximately 300 employees are employed in various job classifications in various departments, including snowmaking and snowmaking maintenance, trails management, lift operations and maintenance, ski patrol, mountain responsibility, and Terrain Park.

The employees at issue in this proceeding are the ski patrollers, paid mountain responsibility team employees and the Terrain Park employees. The number of paid ski patrollers has increased during recent seasons to currently number 70. The job classification of paid mountain responsibility team was created just this season. There are 12 such employees. Paid Terrain Park

¹ No objection having been filed and the changes appearing to be correct, the Employer's Motion to Correct Transcript is granted.

employees are a newly created position this season as well. There are four employees in this job classification.

The Petitioner was initially certified by the Board in 1994 to represent all ski patrollers employed by Keystone Resorts. The Employer and the Petitioner have been parties to successive one-year collective bargaining agreements. The latest such agreement has expired. The recognition clause of those agreements provides:

The company recognizes the Association as its sole and exclusive collective bargaining agent for all matters affecting wages, hours and working conditions for all paid ski patrol employees, but excluding all voluntary ski patrollers, ski instructors, first aide nurses, visiting exchange program patrollers, guards and supervisors as defined by the NLRA in Case Number 27-RC-7447 at the Keystone Ski Area.

Negotiations for an agreement covering the 1999-2000 ski season have, thus far, been unsuccessful.

The Petitioner, by way of this unit clarification petition, seeks to have the Mountain Responsibility Team members (herein after referred to as MRT employees) and the Terrain Park employees included with the ski patrollers into a single unit. As the MRT and Terrain Park employees are newly created positions, resolution of this issue, by way of this petition, is warranted. The Board has stated in *Union Electric Company*, 217 NLRB 666, 667 (1975), that:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement...

Skiers skiing too fast in slow or crowded areas or in other unsafe manners have been a constant concern to the Employer. Guest relations, whether on the

buses or at the base areas of the mountain, has likewise been in constant need of attention. Ski patrollers have historically engaged in both functions and those duties have constituted and continue to constitute a part of the patrollers' job responsibilities.

In response to skier complaints of inadequate monitoring of speeding and out-of-control skiers, the Employer created a mountain responsibility team in the 1997-98 ski season and utilized unpaid volunteers to monitor slow skiing areas during that season. Due to continued concern about monitoring of speeding and out-of-control skiers, during the following season (1998-99), in addition to the continued use of the volunteer mountain responsibility team members, the Employer began paying ski patrollers and ski instructors to work extra shifts that were devoted exclusively to speed control.² Beginning with the current 1999-2000 season, 12 paid mountain responsibility team members are employed to engage in full time skier control monitoring and guest relations.

Until recently, the Employer herein prohibited snowboarding. After finally allowing snowboarders, the Employer also created special "terrain" areas where snowboarders could engage in the tricks of their craft. Until this season, the Employer provided only occasional grooming of these areas. When such grooming was accomplished in prior seasons, it was done by ski patrollers. This

² Ski instructors are normally not paid if there are insufficient numbers of skiers who take lessons on a particular day, and skier speed control is not a normal duty for ski instructors. Thus, when ski instructors volunteered to work extra shifts in "speeder control", this was done outside of their regular assigned responsibilities. In contrast, ski patrollers are paid for each shift they work, and their work is not dependent upon fluctuations in services requested by skiers. Also, as is noted above, skier speed control is part of the regular assigned duties of the patrollers. Due to the far greater numbers of ski instructors, this classification worked the bulk of the extra paid shifts that were devoted exclusively to speed control during the 1998-99 ski season.

season, the Employer created a snowboard park and employed four Terrain Park crew employees to groom and maintain the park area.

Approximately 25% of the ski patrollers' work is related to providing emergency or medical services at the resort. Additionally, the ski patrollers engage in trail openings and closings, speed monitoring and other similar safety tasks, avalanche control, and guest relations. These services are provided by the patrollers throughout the resort on all three mountains.

For about the first two weeks of this season, when skiers congregated on the few open trails, patrollers, along with the MRTs, were almost exclusively engaged in ski speed control. Prior to this season, patrollers regularly performed speed control monitoring during the late afternoons, the end of year holiday period, and spring break. While patrollers continue to engage in speed control, it is now lower on their priority list.

MRT employees are almost entirely engaged in providing guest relations services and monitoring ski speeds in slow skiing areas. After performing guest services on the buses and at the base area of the ski resort, MRT employees are on the hill by 10:00 a.m. Ski monitoring services performed by MRT's are performed primarily in the slow speed areas of Keystone Mountain only. While MRT's engage in some speed monitoring on the other areas of the ski resort, that is the exception. As MRT's do not ordinarily perform their safety monitoring on the other two peaks, it is assumed that, when the need arises on North Peak and The Outback, the patrollers perform this task.

MRT employees occasionally assist ski patrollers in trail sign maintenance and trail openings. Along with the ski patrollers, MRT employees are required to carry latex gloves in the event of a medical emergency. In at least one instance, an MRT employee assisted a patroller in a medical procedure.³ While any employee has authority to pull a ticket or pass for unsafe skiing, MRT employees and patrollers are the only employees who do so on a regular basis.

Patrollers usually work four ten-hour shifts per week with staggered starting times from 4:00 a.m. to 3:00 p.m. MRT employees work primarily from 8:15 a.m. to 4:30 p.m. As MRT's do not work during night skiing, it is assumed the patrollers perform the ski speed monitoring during that time.

The Terrain Park employees work primarily from 7:30 a.m. to 5:00 p.m. They are engaged exclusively in the grooming and maintenance of the area created for snowboarders. The Terrain Park employees perform this work using rakes, shovels, and their hands. They also open and close the Terrain Park area. They do not perform their work elsewhere at the resort. As is noted above, prior to this season, patrollers maintained the signage in the area, opened and closed the terrain, and performed what limited grooming was done in this area.

There is regular contact and interchange between the patrollers and the MRT employees. As noted, on at least one occasion, an MRT employee has assisted a patroller in a medical procedure. Patrollers often engage in monitoring speed control, which is the primary function of the MRT employees. While this is particularly true at the beginning of the season, it remains the case throughout

³ As the hearing in this matter was conducted early in the 1999-2000 ski season, the exact frequency at which certain operations will be performed cannot be firmly established.

the season and over the three mountains operated by the Employer. Whenever a patroller observes a skier skiing unsafely, he will engage in skier control duties.

MRT employees will occasionally engage in maintenance of signs and fences on the trails. This is work within the responsibility of the patrollers. Two MRT employees, who possess the necessary qualifications, have been offered patroller positions. The MRT employees were trained by the patrollers. While the ski patrol headquarters on the mountain is technically open to the public, it is most often used by patrollers and MRT employees for lunch and breaks. Consistent with past years, patrollers continue to engage in guest relations on the buses and the mountain base. This task is now primarily the responsibility of the MRT employees. As needed, all three groups of employees at issue engage in cleanup of the mountain. While putting up and taking down fences is the primary responsibility of the patrollers, other employees, including MRT and Terrain Park employees, do it as well on occasion. Finally, MRT employees occasionally attend morning patrol meetings. They are not, however, required to attend.

Contact between the Terrain Park employees and the patrollers is very limited. In reporting an injury, a Terrain Park employee would have some interaction with patrollers. Other contact, such as the putting up and taking down of fences mentioned above, is incidental, as the Terrain Park employees work almost exclusively at the Terrain Park, while patrollers work throughout the resort on all three peaks.

The three groups of employees currently have separate direct supervision. Prior to this season, the volunteer MRT employees were supervised by the ski patrol department supervisor. The present MRT supervisor is a former patroller promoted to that position. Common supervision exists at the Mountain Operations Manager level, which is the next higher level of supervision.

All paid resort employees enjoy similar benefits, including vacation and health benefits. The starting wage of \$7.50 an hour is the same for all three groups of employees. The wage range for MRT employees is \$7.50 to \$8.50 per hour. The patrollers wage range is substantially higher, as they can earn up to \$15.50 per hour, and most patrollers are compensated at the higher end of the wage range. Terrain Park employees' rate of pay begins at \$7.50 per hour.

Ski patrollers are required to have one of two medical certifications and CPR training. Advancement requires maintenance of these certifications and acquisition of AED (defibrillator) training. While a few MRT employees have some of these medical certifications, the MRT and Terrain Park employees are not required to have any medical training. Patrollers are also required to have evacuation skills to assist skiers stranded on chair lifts or needing assistance down the mountain. These skills are not necessary for the work performed by the MRT and Terrain Park employees. However, the requirement that MRTs carry latex gloves indicates that the Employer anticipates that they will engage in some medical activity on the slopes.

As the MRT and Terrain Park job classifications are newly created this season, there exists no relevant bargaining history which the Board would otherwise consider in determining whether an accretion is proper.

ANALYSIS AND CONCLUSIONS

The law in this area is clear. As it is reluctant to deprive employees of their basic right to select their own bargaining representative, the Board has followed a restrictive policy in finding accretion. *Towne Ford Sales*, 270 NLRB 311 (1984); *Melbet Jewelry Co.*, 180 NLRB 107 (1969). Consequently, the Board will find a valid accretion only when the additional employees have little or no separate group identity and share an overwhelming community of interest with the preexisting unit to which the accretion is sought. *Giant Eagle Markets Company*, 308 NLRB 1172 (1992); *Gitano Group, Inc.*, 308 NLRB 1172 (1992); and *Safeway Stores*, 256 NLRB 918 (1981). The Board considers a number of factors when deciding whether or not additional employees constitutes an accretion or a separate unit. Among those factors are the following: employee contact, interchange and transfer; supervision and conditions of employment; job classification; integration of units; geographic proximity; role of new employees; community of interest; bargaining history; skills and education. Considering the record as a whole and Board law as set forth above, I find that it would be appropriate to include the MRT employees in the preexisting unit of patrollers represented by the Petitioner.

MRT's perform work previously done by patrollers. In fact, all of the duties currently performed by the MRT's are still performed by the patrollers. This duplication of duties; the significant daily contact between the two groups both at work (where the employees at issue frequently work side by side) and at the ski patrol headquarters (where both classifications take their breaks) creates an overwhelming community of interest between the two classifications. The fact that MRT's do not regularly perform all of the duties performed by patrollers and the fact that the MRT duties are typically performed on only one of the three peaks operated by the Employer does not create a separate identity for the MRT's sufficient to warrant their separation from the patrollers. Moreover, MRT's are looked at by the Employer as a source of hiring for patroller positions, and, as of the date of the hearing in this matter, two MRT's have been offered patroller positions. While the MRT's are currently separately supervised at the first level by a former patroller, the skier monitoring work performed by the MRT's has historically been done under the supervision of the ski patrol director. Additionally, the fact that MRT's are unable to advance in pay scale to the same level as the patrollers does not create a separate identity for the MRT's sufficient to warrant the establishment of a bargaining unit separate from the patrollers. Based on all the above, I find that the MRT employees constitute an accretion to the patrollers unit and that the Petitioner is entitled to represent them as part of that unit.

Considering the record as a whole and Board law as set forth above, I further find the Terrain Park employees do not share the required community of

interest with the preexisting unit of patrollers represented by the Petitioner to require their inclusion into that bargaining unit. Patrollers currently engage in no grooming or maintenance of the Terrain Park, which is now the exclusive responsibility of Terrain Park employees. While in the past patrollers performed limited grooming and maintenance duties at the Terrain Park, the record is clear that this grooming and maintenance work was performed on a sporadic basis by a small percentage of the patrollers. In contrast, the four employees now working at the Terrain Park spend virtually all of their time doing the grooming and maintenance of the Terrain Park with no assistance from the patrollers. Additionally, there is only limited contact and no interchange or promotional opportunities between the two groups. Moreover, the Terrain Park employees are separately supervised. Under these circumstances, the correct procedure to determine representation of the Terrain Park employees is through a petition filed pursuant to Section 9(c) of the Act seeking an election. Based on the foregoing, I find that clarification with respect to the Terrain Park employees is not appropriate. Accordingly, I find an insufficient basis upon which to find that the Terrain Park employees should be included in existing unit represented by the Petitioner.

In summary, I find that clarification of the existing bargaining unit represented by the Petitioner is warranted with respect to the MRT's. I further find that clarification of that bargaining unit is not appropriate as to the Terrain Park employees.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Clarification of Bargaining Unit and Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. If filed, this request must be received by the Board in Washington by February 10, 2000.

Dated at Denver, Colorado, this 27th day of January, 2000.

B. Allan Benson
Regional Director
National Labor Relations Board
Region 27
600 Seventeenth Street
700 North Tower, Dominion Plaza
Denver, Colorado 80202-5433

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